

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No. 98-AFC-4
)
Application for Certification for)
the Sunrise Cogeneration and Power)
Project (Sunrise))
_____)

California Energy Commission
1516 Ninth Street
First Floor Hearing Room A
Sacramento, California 95814

Tuesday, May 25, 1999
9:00 a.m. to 10:30 a.m.

Reported by: Nicole M. Johnson, CSR #11891

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

Commissioners Present:

MICHAL MOORE, Presiding Member

Staff Present:

GARY FAY, Hearing Officer

SHAWN PITTARD, Advisor to Commissioner Moore

For the Staff of the Commission:

KRISTINA BERGQUIST, Commission's Project Manager

CARYN J. HOUGH, Senior Staff Counsel

ROGER JOHNSON, Siting Program Manager

For the Applicant:

PAUL DINKEL, Project Manager

JEFFREY HARRIS, Ellison & Schneider

STEVE KOSTKA

DAVID STEIN, Radian International

JULIE WAY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S (C O N T I N U E D)

For the Intervenor:

KATHERINE POOLE, Adams, Broadwell, Joseph & Cardoza
On behalf of California Unions for Reliable Energy

For the Public:

C.J. "BUDDY" EDENS, Central California Chapter

JOHN BRAUN, Central California Chapter

KEVIN BATEMAN, ARB Incorporated

1		
2	I N D E X	
3		
4		Page
5	Proceedings	5
6		
7	Opening Remarks	
	Applicant	7
8	Mr. Steve Kostka	10
	Senior Staff Counsel	13
9	Intervenor	19
10	Transmission	
	Siting Program Manager	41
11	Mr. Jeffery Harris	45
	Ms. Julie Way	53
12		
13	Schedule	
	Commission's Project Manager	56
14		
15	Public Comment	
	Mr. John Braun	56
16	Mr. Buddy Edens	57
	Mr. Kevin Bateman	68
17		
18	Adjournment	69
19	Certification and Declaration of Reporter	70
20		
21		
22		
23		
24		
25		

1 that a second member will be assigned to the case.

2 Having said that, what I'd like to do today
3 is I would like to proceed and ask for staff or any
4 applicants to provide an overview of the actions that
5 they have taken and the recommendations that they have
6 so far. And following that, Mr. Fay or Mr. Pittard or
7 myself may have questions that we would like to go into
8 that may elaborate on any of those points and make them
9 clear to us.

10 At the very end of this proceeding we will
11 need time for public comment, should anyone wish to talk
12 to us about any of the issues that have come up today or
13 make general statements about the project.

14 And with that, Mr. Fay, do you have any
15 opening remarks you would like to make?

16 MR. FAY: If I may just briefly. What we
17 would like to do today is begin with the applicant and
18 then move to the staff and then the representing parties
19 in the case. And if any of the other intervenors are
20 present, they should indicate that right now if they
21 plan to address us. We will take public comment at the
22 end of this time.

23 This meeting was given written notice issue
24 by Commissioner Moore on May 5th, 1999, describing these
25 events as he just summarized them. What I would like to

1 ask is the parties keep in mind that this is also a
2 conference on the Status Report No. 2.

3 If you have anything to add to your written
4 submittal on the status of the case, please do so before
5 you get into your summary of your view on scoping. If
6 you have nothing to add to your written submittal on the
7 status, we will just rely on that written submittal.

8 With that, we would like to go ahead.

9 MR. STEIN: Thank you. Basically what I'd
10 like to do is give you a brief overview of where we have
11 been since we last saw you and let you know the process
12 we worked through to get to the point where the
13 applicant and the staff are comfortable with, the
14 definition of the project that's laid out, and the
15 document that's notified and signified as the blueprint.

16 And then I wanted to ask Steve Kostka to go
17 into a little more details of the issues as well. So
18 that's kind of an overview of where we're headed.

19 We started out with a series of workshops.
20 I think we had probably three workshops including a
21 conference call as well to talk about what the project
22 is and how we have to analyze that project.

23 And I'm happy to report that we have
24 arrived with staff at least in a common understanding of
25 what the project is, what the impact of the projects are

1 and how we should move forward.

2 Obviously there are a lot of details to
3 this blueprint as we move into hearings, but we're real
4 affable with the framework that has been established
5 through these joint discussions and that is what we
6 filed last Friday is the joint blueprint between the CEC
7 Staff and the commission.

8 And I can walk through that briefly if you
9 would like, but I'm sure you had a chance to take a look
10 at those issues, and really I just wanted to emphasize
11 that we think we do have our arms around the direct and
12 the cumulative impact issues to the extent there are
13 issues out there with parties other than the applicant
14 and staff.

15 I think those issues relate to a
16 distinction between the project description under CEQA
17 investigation, the impact analysis. And as you are well
18 aware, the commission is reviewing the impact analysis
19 in a much broader analysis, taking a look at indirect
20 and cumulative impact.

21 We think, through our discussions with
22 staff, we have arrived at a common understanding of how
23 that growth arises, those impacts, and those are
24 reflected in the blueprint that you have before you.

25 We feel that those categorizations will

1 take us to where we need to get to, eventually to a good
2 framework or skeleton, if you will, for the staff
3 assessment and ultimately the final staff assessment.
4 And we have worked very well with staff and with the
5 intervenors as well to come up with a framework here.
6 And I think that we have provided something that we can
7 use.

8 Ultimately our hope today would be that you
9 would adopt that blueprint as the framework for this
10 proceeding and give an order adopting that blueprint as
11 the framework.

12 So with that request, I wanted to turn it
13 over to Steve Kostka. Steve is another member of our
14 team. Steve is probably one of the best known attorneys
15 in California on CEQA issues, that is Steve's specialty.

16 I think Steve's presence on the team
17 reflects the team's dedication that we deal with all of
18 these issues, that doesn't leave any holes for us.
19 We're well aware of the questions that we take a look at
20 in all these issues in a way that make this case
21 completely indispensable in all respects.

22 And one of Steve's passions in life is
23 making sure that we take a look at those CEQA issues.
24 On top of that, he is a good guy so he's been a good
25 addition to the team so I would like Steve to say a few

1 words on the CEQA issues.

2 MR. KOSTKA: The framework that the staff
3 has established provides an overall blueprint for
4 looking at all of the environmental impacts that should
5 be a concern with respect to the action of the board
6 commission. CEQA categorizes the kinds of impacts that
7 ought to be looked at into three categories.

8 The direct impact of the project, indirect
9 impact that may result due to the project and cumulative
10 impact. And what that blueprint has tried to do is look
11 at all of the different activities that are of concern
12 and to classify them into the appropriate framework.

13 And by doing so, it accounts for every kind
14 of impact that might be a concern and sets forth the
15 methods that will be used to examine those impacts.
16 With respect to the direct impacts of the project, the
17 blueprint classifies the combustion generating, the
18 heat recovery, the substations, the power lines and all
19 of the other structure's facilities in a permanent
20 structure which are essential to the cogeneration plant
21 and which are dedicated to its operation.

22 All of those are treated as all of the
23 impacts whether they are construction, impact or
24 operational impact. Those activities are classified as
25 direct project impact and will be evaluated within that

1 framework.

2 The blueprint secondly looks at the
3 question of indirect impacts. The cogeneration plant
4 will be bringing steam to PCI oil production fields.
5 That steam will facilitate operation of the oil wells,
6 and so the staff has determined that the affects of
7 operating those wells that will be supplied with the
8 steam, the new wells, should be looked at as indirect
9 impact under CEQA and that will be done.

10 Thirdly, there are other operations going
11 on in the oil field which are entirely unrelated to the
12 Sunrise Project but nevertheless they are operations
13 which will increase over time.

14 For instance, PCI has received permits for
15 additional steam generators in the field. Those will be
16 examined as well as the blueprint, but they will be
17 examined as cumulative impact because those steam
18 generatings will result in environmental impacts that
19 will be going on during the same period of time, and
20 under CEQA, should be looked at as cumulative impact.

21 I think generally there's no real
22 difference between CURE and the staff about what impact
23 ought to be looked. I think CURE's objection basically
24 goes to how the analysis ought to be classified.

25 In our view, the classification that the

1 staff has made corresponds exactly to what CEQA would
2 require. CEQA treats the project to be evaluated as the
3 activities which are being approved. The activities
4 which are being approved or will be approved we hope is
5 the cogeneration plant, and this blueprint classifies
6 the cogeneration plant as the project.

7 CEQA also requires that indirect impacts be
8 looked at, and as I noted, those indirect impacts may be
9 looked at. What CURE is asking that the staff do is
10 take activities in the oil field, which have no
11 relationship to the Sunrise Project whatsoever and which
12 are entirely independent of the Sunrise Project, and
13 that those be turned into project impacts. That those
14 independent activities be created as part of the Sunrise
15 Project.

16 They are not part of the Sunrise Project.
17 They are independent activities in the oil field that
18 should, for CEQA purposes, be looked at under the
19 cumulative impact analysis and to the extent that those
20 facilities will be because they will be receiving steam
21 from the project.

22 Therefore, look at it as indirect impact
23 and that is how the set proposes to do it and we fully
24 support the blueprint because it does precisely
25 correspond to the way that CEQA would require that the

1 issues be looked at.

2 COMMISSIONER MOORE: Thank you very much.

3 I'll hold questions until we have gotten everyone's

4 comments on the floor.

5 Caryn, welcome. This is Caryn Hough.

6 MS. HOUGH: We do have some additional

7 comments to make on the schedule of filing that we

8 received from the applicant on transmission alternatives

9 but if we --

10 COMMISSIONER MOORE: Let's go to the

11 schedule stuff afterwards. So let me get staff's

12 comments on the scope, and we will just simply address

13 the question of how to meet the schedule until the end

14 of this hearing.

15 MS. HOUGH: Commissioner Moore, I'd like to

16 make a few opening comments, but first I have a couple

17 of points I want to make before I get into it. And I

18 think first of all as to the cover letter to joint

19 blueprint indicated, we're still in discovery.

20 And that means that to a certain extent

21 there is still a little bit of change, but I think to

22 the extent that the blueprint addresses the general

23 scope is very comfortable with what it says.

24 And I know that at some point there is

25 probably going to be some interest on the part of the

1 committee and looking at more specifically by technical
2 area what the scope of the project is, but we haven't
3 addressed that in the filings that we have made today
4 nor were we prepared to address it today. Although we
5 do have the staff biologist who can talk about some of
6 her biology issues.

7 We began discussing the general scope of
8 the project largely in response to concerns that were
9 raised by the CURE that we were inappropriately
10 circumspect of the definition of the project.

11 So for some time now we have been looking
12 at the issues of whether the project is the cogeneration
13 facility and a related activity or was it some broad
14 range of activities associated with oil field
15 development.

16 By now we're all familiar with the
17 definition of what the project is under CEQA. I don't
18 need to go over it here. Clearly the activity that has
19 been proposed for a proposal in this proceeding is the
20 cogeneration. But CURE has made a legitimate question.
21 Is the cogeneration project the whole or the action?
22 Which is what is required under the definition of a
23 project under CEQA.

24 In order to ask this question, we looked at
25 the purpose of CEQA and basically the governmental

1 decisions that are made with environmental connections
2 in mind. Alternatives are considered and that feasible
3 mitigation is imposed for any identified impact that is
4 the purpose. Inform decision making and public
5 participation and avoid adverse impact.

6 Now, CEQA supports a broad definition of
7 the project in order to achieve this. Sunrise is
8 proposing to build a 320 cogeneration plant. It is
9 going to sell electricity and it is going to sell steam
10 to a thermal host for use in a TEOR, Thermal Enhanced
11 Oil Recovery.

12 Does the impact steam, that is a mile long
13 account, be used by this third party in TEOR activities,
14 being the other activities of the thermal host and the
15 oil field, be under our jurisdiction? No, because the
16 goals that determine the scope of the project are best
17 achieved by a different conclusion than the one
18 supported by staff.

19 Let's take a look at how the staff's
20 approach achieves those goals of CEQA. Staff proposes
21 to examine and disclose all aspects of Sunrise's
22 proposal and identify adverse impact.

23 This includes, contrary to CURE's
24 assertion, activities that are outside the scope of our
25 regulatory jurisdiction. This includes Texaco's

1 developmental new wells that may provide steam by the
2 cogeneration project and potential expansion of the
3 waste water treatment facility in toward the project.
4 We're also going to be examining cumulative affects to
5 other power plant projects.

6 Finally we'll be recommending the
7 imposition of feasible mitigation for the affects that
8 we have identified that are associated with the Sunrise
9 Project. As a result, there will be full disclosure of
10 all impact, direct, indirect, and cumulative associates
11 with the cogeneration facility and related activities.

12 And with it may be the imposition of the
13 feasible mitigation for those activities that are
14 correctly associated with the Sunrise Project. That
15 result meets CEQA's goals of full disclosure of the
16 adverse impacts.

17 Now, let's discuss, with the exception of
18 the impacts that staff had included in it, cumulative
19 impact analysis moved into the direct impact categories,
20 and see what happens. Well, understand CEQA, a lead
21 agency, cannot approve a project if it is a significant
22 impact unless that impact is mitigated or an override is
23 used.

24 This future CEC is in an untenable
25 position. We have no authority to impose mitigation on

1 third parties conducting activities related to the
2 cogeneration facility. We can't recommend mitigation,
3 but he's already decided to permit such activities. In
4 fact those activities are ongoing and may continue to go
5 on regardless of what happens with the Sunrise Project.

6 This results in the CEC potentially
7 prohibiting itself for granting a license because it
8 cannot require mitigation from third parties over whom
9 we have no jurisdiction. That's not what the
10 legislature intended that CEQA do.

11 CEQA requires informed decision making and
12 avoidance of impact. Staff's approach achieves that,
13 while CURE's approach would prevent the CEC from issuing
14 a decision because of lack of jurisdiction over
15 activities that are already being allowed and already
16 being conducted by third parties.

17 We're sympathetic to CURE's concern about
18 the lack of environmental reviews over oil field
19 activity, but that circumstance results from local land
20 use decision by local government.

21 And the fact that Kern County has decided
22 to do without a permit, that circumstance does not
23 create CEC jurisdiction over that activity nor does it
24 require the CEC to deny the project because of the third
25 parties activities over which we have no control.

1 So we come back to common sense. Staff is
2 proposing to disclose adverse impacts and to address oil
3 field activities and cumulative analysis and to impose
4 feasible mitigation measures for the reason that's
5 discussed.

6 That's the simple common sense answer for
7 what the scope of the project ought to do and it is the
8 right answer, and we encourage committee to direct
9 parties to use the print that accompanies us in
10 evaluating the impact of the project.

11 COMMISSIONER MOORE: Thank you. And just
12 to recap in your opening remarks. You indicated that
13 this was not the scoping conference in which we would be
14 discussing methodologies or the actual nature of the
15 query itself.

16 MS. HOUGH: By technical area discussion,
17 for example, what are we going to be looking at in land
18 use, what are we going to be looking at in air quality?
19 It is not asking what we're ready to discuss yet because
20 discovery has not been completed.

21 This is one that we have made quite a bit
22 of progress in and we do have the staff person from
23 biological. So if you want to get a sense of how that's
24 going, we can bring him to the table and let him talk to
25 you.

1 COMMISSIONER MOORE: Would you anticipate
2 that there would be a further scoping conference to
3 discuss this?

4 MS. HOUGH: If the committee wants one. If
5 the committee is concerned that staff cover the proper
6 scope in each technical area, I think that would be
7 appropriate.

8 COMMISSIONER MOORE: Okay. I'm not sure
9 that we will need that. I think it is clear that the
10 committee is going to want to examine those and want to
11 know point by point how the analysis is going to be
12 done, and in order to be able to cover that, but I sense
13 that we're not doing that today. Other staff comments?
14 Kristina, do you have any?

15 MS. BERGQUIST: No.

16 COMMISSIONER MOORE: All right.
17 Katherine Poole, welcome.

18 MS. POOLE: Thank you. Well, I think you
19 have been given a pretty good idea of how the
20 discussions have gone so far and how staff and the
21 applicant have reached their conclusions. Let me just
22 try to briefly explain to you how we reached our
23 conclusion.

24 Almost exactly a year and a half ago in
25 November of '97, Texaco acquired a company called

1 Monterey Resources, which has significant holdings in
2 the way of the Sunset oil fields.

3 Texaco bought the company because it saw an
4 opportunity to more than double oil production from the
5 Monterey Resources and by applying its oil recovery
6 techniques. Once the purchase went through, Texaco
7 immediately developed a land to pursue its oil field
8 expansion by generating more steam and drilling new oil
9 wells on the old Monterey Resource land.

10 That plan is laid out in the Sunrise AFC
11 that includes implantation of 36 new steam generation
12 including the 1300 new oil wells, a new gas pipeline to
13 get fuel to all of these oil wells, a new utility door
14 to plan for the steam from the generation of the well,
15 and a waste water treatment plant to extract water to
16 the generation.

17 This whole proposal is the project that is
18 to be applied under CEQA, not just the small part of it
19 that falls under the commission licensing jurisdiction.
20 Texaco's proposal is no different from any other
21 developer's proposal to build something like a new
22 shopping center or a 500-home residential development on
23 property that they have recently acquired.

24 CEQA does not look at the shopping center
25 proposal store by store, even though different stores

1 may require different permits. It looks at the whole
2 project because that's what the developer has proposed.

3 It also doesn't look at only 300 homes at
4 the residential development, because that is all that is
5 necessary to the developer to proceed with an economical
6 viable project. Again, it looks at the project that the
7 developer has proposed because that's what defines the
8 project under CEQA.

9 Just like those projects, the commission
10 can't break off the Sunrise Plant here and raise it
11 separately from the overall development proposal. There
12 are only two aspects of the Sunrise Plant that set it
13 apart from the rest of the oil field expansion. It is
14 the only part of project that requires an Energy
15 Commission permit. But CEQA is very clear that the
16 scope of the government permit is not what defines the
17 permit from environmental analysis.

18 Second, the Sunrise Plant is being proposed
19 by a second subsidiary, Texaco. Again, this doesn't
20 matter for CEQA purposes. If it did, than every
21 developer in the state would create subsidiaries too and
22 defeat the purpose of CEQA. Texaco also argued that the
23 Sunrise Cogeneration is not necessary for the oil field
24 expansion or commission need not analyze the whole
25 project.

1 This isn't the right test for developing
2 the project under CEQA. The project is what the
3 developer has proposed, not some hypothetical collection
4 of necessary pieces. Again, a grocery store might not
5 be necessary for a shopping center development, but if
6 it is what the developers proposed, than it is what must
7 be analyzed under CEQA.

8 Even if this were the right test, the oil
9 field expansion is in fact necessary for the Sunrise
10 Plant at this time. The reason the Sunrise Plant is
11 being proposed, the primary purpose of Sunrise will be
12 to generate steam from the oil field. It is not just a
13 by-product of the plant. If it was just a by-product,
14 then Sunrise would be proposing a combined cycle
15 facility to expand the electricity production but it is
16 not.

17 In addition, the Sunrise Plant can operate
18 without certain parts of oil field expansion. The new
19 gas pipeline, the utility door and the expanded waste
20 water treatment perhaps are all necessary for the
21 Sunrise Plant to function.

22 Critical things to keep in mind on
23 something that both Ms. Hough and Mr. Kostka touched on
24 is the parties have proposed an almost identical set of
25 things that need to be reviewed under CEQA.

1 No matter what the CEQA analysis is in this
2 case, it is going to be a big test. The only difference
3 is whether the activities are categorized, whether they
4 are direct or indirect project impact or cumulative
5 project impact.

6 The difference is critical, however,
7 because Texaco is claiming that under the new CEQA
8 guideline, that the Energy Commission doesn't have the
9 authority to identify mitigation for the oil field that
10 learn to direct effective Sunrise Plant, but there's no
11 question that the commission can.

12 I think mitigation measures for those
13 impacts, if they are part of the project, even if those
14 mitigation measures fall outside of the commission's
15 authority, it still is important they be identified, and
16 that other responsible agencies who are participating in
17 this project review can, themselves, impose those
18 impacts.

19 COMMISSIONER MOORE: Impose those
20 mitigations?

21 MS. POOLE: Impose those mitigation
22 measures, excuse me. We don't agree that this approach
23 would prevent the Energy Commission from approving the
24 Sunrise Plant to you. It simply combines with CEQA's
25 directive to disclose all of the impacts of the project

1 and to identify feasible mitigation measures.

2 It may be up to other agencies to decide

3 what those mitigation measures will be imposed but

4 that's not the question to determine the scope of the

5 project under CEQA.

6 COMMISSIONER MOORE: Ms. Poole, did you

7 make any of these arguments to Kern County?

8 MS. POOLE: No, I did not.

9 COMMISSIONER MOORE: There's been no

10 appearance of the CURE representatives in any form at

11 the county where they were previously considering

12 permits for the ancillary project?

13 MR. KOSTKA: I don't think Kern County

14 issues any permits for anything associated with this

15 project.

16 COMMISSIONER MOORE: Okay. That concludes

17 your opening remarks?

18 MS. POOLE: Yes.

19 COMMISSIONER MOORE: Are there any other

20 intervenors here today that would like to be

21 representing this issue? All right. With that, and let

22 me just say, Caryn, we won't be calling a biologist

23 today so that won't be necessary. We will deal with

24 that in a later course so there's no need to use up

25 people's time with that today.

1 Caryn, let me turn to you and ask. It
2 seems to me that we have dialed into an area where the
3 disagreements are fairly fine, there's not a big group
4 of them, and they concern whether or not a group of
5 improvements can be classified as direct or found in
6 cumulative impact category. I think I have heard
7 everyone saying some variant of that.

8 MS. HOUGH: I think that's correct.

9 COMMISSIONER MOORE: That, in one way or
10 another, when we look at the project and everyone has
11 got a map of what the project has in mind, we would all
12 pretty much have the same map.

13 I have seen numbers of the same ancillary
14 wells going up and down, but it looks as though everyone
15 has got a pretty consistent number of that. What I have
16 in mind is 700. Is that right?

17 MS. HOUGH: New wells?

18 COMMISSIONER MOORE: New wells give or take
19 some pair or factor, that's a relevant number. And the
20 other facilities are not in dispute. There's a
21 substation, there is a power line, there are roads.
22 We're agreed that those are all going to occur as this
23 project goes forward.

24 The disagreement is whether or not they can
25 be directed in a direct fashion or whether they have

1 simply got to be accounted for in a cumulative fashion,
2 such as, from companies that indicated earlier. So do
3 you want to take a stab and I can ask everyone else to
4 come in as well. We will just get somebody on the table
5 and say where the disagreement comes --

6 MS. HOUGH: The disagreement, as you are
7 pointing out, comes from the categorization of basically
8 what I want to call indirect impact and cumulative
9 impact.

10 If you were to define the scope of the
11 project, as Katherine's recommending, as tax proposed
12 proposal to expand the oil field development in Monterey
13 Resources property, all of the new wells, all of the new
14 roads whether or not they were being provided steam by
15 the Sunrise Project as well as the Sunrise Project,
16 would all be part of the project's direct impacts.

17 We're disagreeing that that is the
18 appropriate decision of the project. We think that the
19 appropriate decision of the project is the Sunrise
20 facility itself. It is a permanent facility such as the
21 substation and the waterline as well as those activities
22 and impacts that occur indirectly as a result of the
23 Sunrise Project.

24 In other words, the Sunrise Project may
25 provide steam to several hundred new wells. Staff says

1 those are indirect impacts, the result of those are
2 indirect impacts result from the Sunrise Project, with
3 respect to other new wells that the company may build,
4 other new access roads into steam generating that are
5 there directly to the Sunrise Project.

6 We are looking at those as cumulative
7 impacts. The impacts of a similar nature may happen in
8 a similar time frame, but they are not indicated by or
9 necessary for the project as we have defined it and so
10 we look at them under a cumulative impact analysis.

11 COMMISSIONER MOORE: Let me try this the
12 other way around. If we take time forward and it is
13 nine months from now, ten months from now, and this
14 project is denied, no certificate is issued either by
15 the committee in its recommendation or by the commission
16 in its final action, are those 700 new wells, new roads
17 and any ancillary transmission facilities economically
18 viable in your opinion? And I'll come back to -- do
19 they exist do they come about?

20 MS. HOUGH: They may exist but they would
21 be secured by other steam generators. In another words,
22 Texaco is proposing to go forward with 30 new steam
23 generators for the development of this, in furtherance,
24 of this oil field development proposal.

25 Whether the specific wells that would be

1 served by Sunrise Project would go in, I guess is
2 subject to speculation, but it is my understanding that
3 they have proposed to go forward with all of the oil
4 field expansion activities regardless of what happens
5 with this.

6 COMMISSIONER MOORE: Mr. Harris, I can turn
7 back to you and ask that same question.

8 MR. HARRIS: Yes. We understand that this
9 would continue with or without the Sunrise Project and
10 that's been our treatment and is in fact the indication
11 that that would affect, like, the price of oil and other
12 things we can't control.

13 COMMISSIONER MOORE: So if I magically
14 expunged the Sunrise Project and I said, "I'm sorry, you
15 are just never going to have that." If I had the
16 ability so say that and it is gone, it is off the table,
17 and it is your understanding that the other facilities
18 would proceed, and they would occur in any case. So if
19 I look at the -- if I draw a virtual ring around this
20 project, all those ringed facilities would end up
21 getting built?

22 MR. HARRIS: Yes, they would occur with or
23 without the Sunrise Project. For example, you saw the
24 utility door described. If it is something that they
25 need, yes, with or without the project it would go

1 forward.

2 COMMISSIONER MOORE: Ms. Poole, how do you
3 respond to that? Does that change your argument at all?

4 MS. POOLE: No, I think that individual
5 part of the oil field expansion project is fundable. I
6 think if one or two steam generators were not permitted,
7 as Texaco has proposed, then perhaps they would create
8 other steam generators elsewhere or develop a plan to
9 purchase steam from some other producer.

10 Or if this project wasn't licensed, build a
11 couple other steam generators in its place. But the
12 reverse is not true, the oil field expansion is
13 necessary for this project. None of those individual
14 pieces would proceed without that overall development
15 proposal because that's what they are all being
16 developed for.

17 COMMISSIONER MOORE: Okay. So what we have
18 here is a disbelief in what they have just contended.
19 So you are maintaining that in fact it wouldn't happen
20 absent the steam generator plant and they are
21 maintaining that it would.

22 MS. POOLE: No, I wouldn't characterize it
23 that way. I'm saying that the Sunrise -- there's no
24 evidence that the Sunrise Plant would be built if Texaco
25 wasn't pursuing their oil field expansion in the

1 Monterey research.

2 COMMISSIONER MOORE: But the reverse of
3 that that there would be the oil field steam project
4 going ahead even if there was no Sunrise Project appears
5 to be true or at least it is being asserted that it is
6 true.

7 MS. POOLE: Yeah, that may very well be
8 true.

9 COMMISSIONER MOORE: Thank you. Mr. Fay.

10 MR. FAY: Thank you, Commissioner. Just a
11 few questions. Mr. Kostka, I want to make sure I
12 understand this correctly. It sounds like, by what
13 Mr. Harris said, that there's some overlapping areas of
14 analysis here.

15 The approach proposed by the applicant and
16 staff will analyze the indirect impact and/or cumulative
17 impact of some of these facilities out in the oil field
18 beyond the commission's jurisdiction.

19 That analysis, while it wouldn't take place
20 here at the commission if the project were removed,
21 would still be appropriate for somebody to analyze from
22 another perspective.

23 For instance, if DOJ was receiving permits
24 for those oil wells, that would be properly under CEQA
25 examining the impact of those wells.

1 MR. KOSTKA: Well, let me first clarify how
2 the analysis is going to be done here under the staff's
3 framework. The steam will be provided to a zone, an
4 area within the oil field, which is roughly a mile and a
5 half in diameter, 3/4 mile radius.

6 And the staff's blueprint provides to treat
7 the 700 oil wells and steam wells within that area as
8 being indirect impacts of the project. The theory being
9 that the well would be facilitated by the steam from the
10 project.

11 Outside that zone is other developments
12 which may occur of additional wells, which will be
13 supplied by other steam generators which have already
14 been permitted and those will be treated as the impact.

15 With respect to permitting by other
16 agencies of those wells, the county ordinances provide
17 that those wells may be installed as a part of right.
18 It treats those activities essentially as vested
19 activities.

20 The county also adopted an environmental
21 impact report and amendment to its general plan for the
22 energy element. It looked at the impact of oil
23 production at that time.

24 In addition, the Department of Oil and Gas
25 does have permitting responsibility over oil wells, but

1 I believe they treat that as a ministerial permit and
2 don't conduct in CEQA review.

3 MR. FAY: Okay. Thank you. My other
4 question is under the CEQA analysis, what if the staff
5 identified a significant name match as a result of their
6 analysis of indirect or cumulative impact? In other
7 words, extrajurisdiction as far as the Energy Commission
8 is concerned, are they obligated at that time?

9 MR. KOSTKA: With respect to the cumulative
10 impact agencies, obligation is to adopt mitigation for
11 the project's contribution to that cumulative impact.
12 The cogeneration plant will be resulting in emission of
13 their pollutant, and that will contribute to a
14 cumulative air pollution problem. Then the commission's
15 duty is to mitigate the air pollution resulting from the
16 project. That takes care of its contribution to the
17 cumulative impact.

18 With respect to indirect impact, the answer
19 is somewhat less clear, and I can't tell you
20 definitively what the answer is, but I can tell you what
21 answer the staff has on here. Staff has come to the
22 extent of impact viewed as indirect impacts of the
23 Sunrise Project and the Sunrise Project will be
24 responsible for mitigation.

25 MR. FAY: And if the matter is outside the

1 jurisdiction of the Energy Commission, is there an
2 obligation under CEQA to inform the jurisdictional
3 agency of recommendation for mitigation?

4 MR. KOSTKA: I think there is an obligation
5 in the sense that if other responsible agencies be using
6 the CEQA document prepared by the CEC, than those
7 responsible agencies are bound by that CEQA document.

8 And accordingly, they would be bound by
9 whatever mitigation is required for the project.
10 Separate, apart from that, I don't think there's any
11 legal duty to go beyond that as a lead agency if I
12 understand the question correctly.

13 MR. FAY: Well, I just wonder if the
14 commission would draw a line on jurisdiction or
15 recognize if they found additional impact beyond its
16 jurisdiction, would be applied top draw in its
17 documentation so the public and other agencies were
18 informed.

19 MR. KOSTKA: Well, that certainly is true.
20 The commission is obliged to look at all of the impacts
21 and indeed that is one of our fundamental points that
22 this document will look at all of the impacts.

23 It will be looking at the impact of
24 individual development in the oil fields as part of its
25 analysis and certainly other agencies can look to the

1 intended permitting oil fields.

2 MR. FAY: So the approach that you and
3 staff have recommended or CURE's approach there would be
4 a full discussion of all impacts from the project,
5 including ones that are beyond their jurisdiction of all
6 impacts.

7 The impacts directly resulting, all impacts
8 that are classified as indirectly resulting from the
9 project, and then the impact of other activities that
10 are going on currently in the area that are independent
11 of the project.

12 MR. FAY: So the information available
13 should be the same under either approach; is that
14 correct?

15 MR. KOSTKA: Legally the analysis of
16 cumulative impact does not have to be as detailed. We
17 haven't gotten to the point of looking at what
18 methodology will be used or looking at those kind of
19 impacts, but really the CEC is not required to analyze
20 cumulative impacts at the same level of detail as they
21 would.

22 MR. FAY: Thank you. And Ms. Hough, is
23 there any -- do you anticipate any document to the
24 committee prior to the PSA that would sort of, assuming
25 there's not an additional reason regarding skipping a

1 document, that would inform the committee on just what
2 methodologies you indeed intend to implant the
3 blueprint?

4 MS. HOUGH: There is nothing like that in
5 any of the typical schedules that we use for the SASV
6 process. We can certainly put something like that in or
7 perhaps attach it to part of another status report if
8 the committee will find it helpful.

9 MR. FAY: It will. It occurred to me as
10 you were speaking, that PSA might be the first
11 opportunity the committee would have to see exactly how
12 you solved these questions in detail and in at least the
13 more controversial areas.

14 If there was an outline in a little more
15 detail as to what the PSA will do, that might be
16 helpful. Since something like that can be generated I'm
17 sure a week before the PSA actually came out. And I
18 think if the committee recognized a problem, we could
19 inform the staff as soon as possible.

20 MS. HOUGH: I have every confidence that we
21 will be directed to file another report to the PSA. So
22 that will be another vehicle to conclude that
23 discussion.

24 MR. FAY: Okay. And then my last question
25 was, Ms. Poole, as I understand, some of the indications

1 of the things that you have included in your scope of
2 the project it concludes the ability has already been
3 reviewed and permitted by other agencies and that they
4 have exercised their jurisdiction to perhaps determine
5 whether or not any mitigation measures are needed.

6 What role would we have in reviewing
7 something like that as a part of the scope of this
8 project?

9 MS. POOLE: Well, the problem that we face
10 in our agency is the CEQA review, the commission, is the
11 lead agency for that purpose. And because those other
12 agencies aren't doing it, certain impacts are not being
13 identified and will not be mitigated unless the
14 commission identifies mitigation measures for those
15 impacts, whether or not the commission has the authority
16 to impose in mitigation measures.

17 CEQA does require that they be identified
18 if they are feasible as part of the analysis, and that's
19 the piece that's missing in these other activities
20 analyzed under cumulative analysis because mitigation
21 measures won't be identified for those activities.

22 COMMISSIONER MOORE: Thank you. I have one
23 follow-up question, Mr. Kostka, and that is in your
24 remarks, you indicated that indirect impact would be
25 minimal as opposed to simply direct impacts. I want to

1 make sure that I understood that right that if we draw
2 this primary ring around the plant and those wells are
3 considered as part of interactive impacts, that
4 mitigation is proper and appropriate in that zone
5 mitigation measures.

6 MR. KOSTKA: Staff has indicated that they
7 would require mitigation for the biological impact of
8 the new wells within that zone, and that is acceptable
9 to Sunrise.

10 COMMISSIONER MOORE: I would hate to leave
11 it with just the idea of biological impact. I guess I
12 want to stab a little bit broader plane, and I'm trying
13 to understand where the ability to impose mitigation
14 starts and ends.

15 Ms. Poole is maintaining, and I believe you
16 concur, that in the arena of cumulative impact, it is a
17 limited set of responsibilities. In other words, that
18 it is -- I guess I would term proportional or some
19 proportional test in the arena of interactive and then
20 back into direct. Those are areas where connected
21 impacts can be mitigated or can require mitigation. I
22 just want to make sure I understand that.

23 MR. KOSTKA: Well, ordinarily what we are
24 referring to as indirect effects would be addressed and
25 mitigated by another agency. The fact is that in

1 preparing the environmental impact reports, well field
2 activities in the County of Kern has determined they do
3 not have significant adverse effects.

4 As concluded, if there are no significant
5 adverse biological effects present, expanded oil field
6 activity allowed those oil field activities to count as
7 a matter of right. That makes it a little bit of a
8 unique situation here.

9 Sunrise is willing to agree to provide
10 appropriate mitigation for the indirect effect of
11 activities that the staff has classified as indirect.

12 COMMISSIONER MOORE: Fine. With that, I'm
13 going to go next to the scheduling issue, but I want to
14 then allow each team to add anything in that I might not
15 have asked you wished you gotten on the record.

16 So Mr. Harris, can we turn back to you and
17 say, as we go around the table here, is there anything
18 that you wished I asked that I didn't send out and you
19 would like to get on the record?

20 MR. HARRIS: The only thing that I can
21 think of are there some members of the public.

22 COMMISSIONER MOORE: And I will do that
23 too, but I think we will probably -- other than that, I
24 think we're ready to proceed. Thank you. Ms. Hough?

25 MS. HOUGH: Nothing further.

1 COMMISSIONER MOORE: Ms. Poole?

2 MS. POOLE: The schedule.

3 COMMISSIONER MOORE: I'm not on scheduling.

4 Do you have an questions about anything we talked about

5 this morning?

6 MS. POOLE: Okay. I do have a follow-up

7 point on that Texaco suggested several times during this

8 discussion and previous discussions on scope that the

9 oil field expansion has somehow already been analyzed

10 under Kern County's general plan.

11 I have a copy of that assessment that was

12 prepared in 1981 for Kern County's general plan. It

13 says in here, "This document is not detailed enough for

14 environmental coverage for anything but this project."

15 So this document was not competent to provide a

16 surrogate environmental analysis for things like ongoing

17 expansion activity that Texaco has proposed however many

18 years later, 18 year later.

19 COMMISSIONER MOORE: Was the EIR done on

20 the general plan?

21 MS. POOLE: Right.

22 COMMISSIONER MOORE: And when was it

23 updated, did they do a subsequent EIR?

24 MS. POOLE: Not that I know of.

25 COMMISSIONER MOORE: Anyone here aware that

1 they did?

2 MR. KOSTKA: They updated the energy in
3 '91.

4 COMMISSIONER MOORE: On --

5 MR. KOSTKA: On the '91 energy element, I
6 don't think there was an update, but I might be wrong on
7 that.

8 COMMISSIONER MOORE: Let me turn to staff
9 and ask them if they can find out for us. And if there
10 is, I would like to have that entered in the dockets.
11 Thank you. Let me change topics. I'm sorry, Mr. Fay
12 has one more question.

13 MR. FAY: I overlooked this earlier. Under
14 indirect effect, I didn't find this in your joint
15 blueprint, is that something that you think is to be
16 analyzed or --

17 MS. HOUGH: Staff typically does look at
18 growth inducing impact of this analysis.

19 MR. FAY: As part of what, cumulative or
20 indirect?

21 MS. HOUGH: I think it is usually in a
22 category by itself.

23 COMMISSIONER MOORE: So you are saying that
24 truck traffic -- the point that's raised is something
25 that would normally be considered in the core of that.

1 MS. HOUGH: Truck traffic, that's on vote
2 with the project, and the indirect active into the oil
3 field gets included in trucks in the staff, but there's
4 usually a more discussion of growth induces impact in
5 the staff analysis. But the specific issues of, as I
6 said truck traffic or whatever that are associated with
7 the project, gets covered in the project.

8 MR. FAY: So there's no disagreement on
9 that. It just wasn't articulated in the blueprint.

10 COMMISSIONER MOORE: All right. Let's turn
11 to scheduling issues for a second. I have a proposed
12 schedule that is now obviously, at least in part, out of
13 date, because this is not late April. In fact it is
14 late May and so let me ask staff for opinions about
15 where we are off schedule.

16 MR. JOHNSON: My name is Roger Johnson,
17 siting program manager. As far as the Sunrise schedule,
18 we have concerns over the schedule because of some
19 information that's recently been brought to us by the
20 applicant in addition to all the work we have been doing
21 here on trying to define the scope of the project.

22 The applicant has determined that they need
23 to develop new transmission line routes to drive the
24 project up to midway substation scenario from the
25 project.

1 We are expecting to receive a supplement to
2 the AFC, which would describe these new routes and the
3 information hopefully that you would need to evaluate
4 that.

5 This new transmissions line route
6 supplementary is needed for about a third of the
7 technical areas to be complete. Staff will need to
8 evaluate the supplemental information to determine its
9 completeness.

10 We can conduct a workshop with the
11 applicant to explain any deficiencies and if necessary
12 request additional information that might be needed.

13 Ultimately the committee can schedule a
14 conference to discuss the adequacy of the assessment and
15 the potential. And the third option would be for the
16 staff to evaluate the information and to report to staff
17 about the completeness and the need for additional
18 information.

19 We're concerned about this information
20 because a similar situation occurred recently to the
21 Pittsburgh Project, where the applicant provided a late
22 filing of critical information. In that case, the staff
23 reported to the committee that the supplement will delay
24 by some four weeks in that case.

25 The committee considered some scheduling

1 concerns and directed staff to skip the PSA and go
2 directly to the single staff assessment that would occur
3 at the same time as the PSA would normally occur.

4 The committee directed staff to hold
5 workshops on that testimony, revise it if necessary and
6 file supplemental testimony before the hearings in
7 Pittsburgh.

8 We believe this was a worthwhile experiment
9 but the down side was people had trouble understanding
10 the complete project under terms of the final analysis
11 and supplementals.

12 There was no one document that fully
13 described the project impact and mitigation. A single
14 PSA followed by workshop and a complete PSA is a
15 preferred way to enter hearings and avoid days of
16 adjudication and unresolved issues.

17 We currently have nine siting cases and
18 expect another in July. This will likely cause some
19 delay in our ability to complete our PSA. However, at
20 this time we can't estimate that impact to the schedule
21 until we see the material and have a chance to review
22 it.

23 COMMISSIONER MOORE: Mr. Johnson, if you
24 had to guess how much of a delay is implied by that and
25 if it is similar to between this and Pittsburgh are

1 real, what would you guess from your end what that
2 length would be?

3 MR. JOHNSON: We have queried some of the
4 staff that they have estimated 60 days would be the
5 outside of that.

6 COMMISSIONER MOORE: Okay. I am not going
7 to try and second guess that, but let me just tell you
8 what I'm prepared to do, and what I am not prepared to
9 do.

10 I won't skip the PSA, that won't happen in
11 this case. However, I'm not in the business of trying
12 to promote unnecessary delays for people who have got
13 investment to do.

14 I'll work as well as I can to accommodate a
15 hearing schedule that brings this along in a timely
16 fashion and get a report out. I think Mr. Harris echoed
17 my feeling well enough earlier.

18 My responsibility here is to make sure we
19 have a complete, full record, one that is accurate, one
20 that is bullet proof. I will have served no purpose if
21 I end up with a committee recommendation at the end that
22 gets torn apart. The project, whatever status it is in,
23 gets moved backwards from where it might have been.
24 That's not in the public interest and not in the
25 applicant's interest.

1 So I guess what I'm going to have to do
2 then, and I want to go through some of the other
3 recommendations here, I'm still aiming at --

4 MR. HARRIS: Commissioner, I'm sorry. I
5 hate to interrupt. Are we still on transmission issues,
6 because I think there are a couple factual issues I'd
7 like to get on the table.

8 COMMISSIONER MOORE: Sure go ahead.

9 MR. HARRIS: We filed a new map, and I was
10 prepared to talk about schedule changes today.

11 COMMISSIONER MOORE: We're keeping it as
12 general and plain as we can.

13 MR. HARRIS: We filed the map -- I'm sorry,
14 I don't have it on a board, but I think I may ask Paul
15 to stand up and hold it if he can. So can you still
16 hear me? There's considerable confusion about what this
17 transmission supplement is, and I want to try to clarify
18 that.

19 We filed originally three routes in the
20 AFC. The C Route, which basically fell off the table,
21 went too far south. And then the B Route is a stand
22 alone route that runs from the project, all long the
23 project and midway to Sunset, complete stand alone
24 project, and that B Route is in the AFC.

25 The few routes -- they are not really

1 routes, they are variations on the route. I want to
2 make that point because I think it is very important for
3 understanding the impact analysis associated with the
4 transmission supplement.

5 These routes are what are designated as
6 routes D, E and F. They look like brand new routes.
7 Actually each of these projects is a joint venture
8 project that is a variation of the B Route as filed in
9 the AFC.

10 For example, the D Route would be in a
11 joint project between Sunrise and the midway Sunset
12 facility. In that sense, it would basically be our
13 project joining together and following our B Route
14 region joining at the AFC.

15 The E Route is a joint project between the
16 Sunrise Sunset and La Paloma. Under this scenario, we
17 would follow the B Route, join at the La Paloma. So
18 essentially eliminate the route from La Paloma all the
19 way to the midway substation.

20 So in that sense, that project is going to
21 have fewer impacts than even our B Route as filed in the
22 AFC. And the F Route is a joint project between Sunrise
23 and La Paloma. So we would be getting from Sunrise to
24 the B Route, and then once again using the La Paloma
25 facility to make it into the midway Sunset.

1 So in each of those variations that you see
2 here, either when we're using the B Route as filed in
3 the AFC, or we're going to be joining with other project
4 and having fewer transmission lines in that same area.

5 So from an impact analysis, I think you can
6 only conclude that the impacts are going to be no
7 greater than the B Route as filed. And I want to make
8 sure that we are clear that these are not brand new
9 transmission routes. They are our attempt to respond to
10 what we have heard you and ISO and other people say
11 about trying to get joint project wherever possible.

12 So in that sense, I'm concerned about the
13 message that an applicant takes your admonition to
14 heart, goes out and tries to do commercial ventures with
15 other projects. Somehow that might possibly result in a
16 slip of our schedule.

17 Our intent is not to put a slip in our
18 schedule. We're putting this in pieces so that the
19 staff will have information to arrive in the most
20 important stuff first.

21 COMMISSIONER MOORE: All right. Let me
22 respond to that by saying that in this wonderfully
23 vulcanized world that I live in of this type of decision
24 making, I'm not a direct party to how the staff does
25 their environmental impact analysis. I can comment on

1 methods, and you heard me indicate that I intend to do
2 that.

3 Frankly, part of what I'm doing is trying
4 to tighten up what use for all of the other cases that
5 I'm going to end up sitting on. I want to make sure
6 that we're doing a uniform and consistent job, so that's
7 part of the process.

8 Second, I am not in the business of
9 defining the project. If I was, I would require -- if I
10 was God in this kind of process, I would require a fully
11 defined projecting the day's adequacy phase. And if I
12 was wearing my old local government hat, I'd have
13 someone come in, and I would get a secret document. I
14 can't do that either.

15 In a sense, I'm in a position here where
16 things are coming in, and I'm trying to make the right
17 decision at each point. I believe that you have been
18 heard about what the changes are and what you attend in
19 terms of the transmission facilities.

20 At this point I don't really have anything
21 to say that will slip off this schedule until I get
22 staff to have a conference with you and deal with it
23 accordingly. All I can tell you is there is a policy
24 matter. I am not inclined to skip the PSA, and I fully
25 intend to use that.

1 I think that's a good part of our decision
2 making. Frankly, if the analysis gets drawn out at the
3 end, I will slip the schedule. I'll slip the schedule
4 so that I have a complete record. I simply won't
5 compromise it and whether that seems painful or not, I
6 apologize, but I believe it is in the applicant's best
7 interest as well as the public's best interest.

8 I will have a complete record, and I will
9 have a complete and thorough examination of all issues.
10 Where the record is agreed to by all parties, I am not
11 going to spend a lot of time on it, and I'll adjust the
12 schedule at the end but not artificially in order to
13 compress it so that we meet an artificial deadline of
14 the year.

15 I certainly have the year target in mind,
16 there's no question about that. I know how important it
17 is. I fully understand what the financing means, and I
18 know that the staff works hard. So that's my target, I
19 haven't changed my target.

20 We have to adjust it and I'll adjust it
21 until we're done, but I won't wholesale just move it out
22 to some arbitrary level to have another month or have
23 another 60 days. I'll adjust so that we meet the
24 information needs and the discussion needs.

25 So Mr. Johnson, I take your arguments and

1 your remarks seriously. I trust that you will meet with
2 the applicant and that you will forward on further
3 comments about what you see as slip on a continuous
4 basis.

5 I would rather you not hear about these
6 six-week intervals or something where I look back and
7 suddenly I have lost a block of time. I rather you keep
8 my aide or my attorney involved continuously so we can
9 adjust continuously, and I'll make those adjustments
10 into the schedule as much as I can.

11 And, you know, that brings up another
12 point. Typically, and dare I say more controversial
13 cases, I certainly try to make a point of having
14 hearings in the field in the locale where their
15 community is. This may not be that case and it may be
16 easier for all Kern to have hearings here.

17 I want your -- when we move forward, I'd
18 like to have your impact in on that applicant, staff,
19 whether it is appropriate to have some of those hearings
20 up here. It certainly saves a lot of resource time to
21 not move the staff around if we can do it. If not, you
22 know, I'm prepared certainly as a member to go to the
23 community but there may be a case where we can avoid it,
24 and I'll appreciate your comment on that. Other staff
25 remarks?

1 MR. FAY: Mr. Johnson, obviously it is not
2 in staff's or the public's interest to penalize an
3 applicant that mitigates a project just for doing that
4 mitigation, that goes without saying.

5 But I think, Mr. Harris, by the same token,
6 you have got to understand that if an applicant comes in
7 and says, "Hey, those problems before are gone, now we
8 solved them." So now you don't even have to look at
9 something just on face value.

10 And there is some analysis that has to be
11 done just to determine if a potential impact has
12 actually been eliminated, and what this reminds me of is
13 a recent case in which we had a similar situation. And
14 I think staff and the applicant did well in handling
15 that as officially as possible.

16 And what I would like to recommend is that
17 you explore the way that the information can come in so
18 that staff can be fairly quickly or initially convinced
19 that what you say is true. Somehow make that crystal
20 clear in a way that staff can use that.

21 It doesn't have to just put your supplement
22 in the supplemental EIR bin and get out for another 60
23 days, but can actually look at whether or not some
24 problems have been completed in a very quick way. Does
25 that make sense, Mr. Johnson? Is that something that's

1 a possibility?

2 MR. JOHNSON: It does. I just want to also
3 clarify that the bulk of my concern and comment didn't
4 deal with any of the route that Mr. Harris described.
5 It was Route G that he didn't talk about. It is an all
6 new route which is all new biology information and so
7 that's the kind of route that we need to spend some time
8 and understand.

9 COMMISSIONER MOORE: Yeah, I understand
10 and, again, I will await the discussions between you and
11 the applicant about what that means. Again, my
12 intention is not to delay. I just want to make sure
13 that -- because at this point I am not in the rank, I am
14 just not there. All I received is the document that Ms.
15 Bergquist had in front her so far, so that's it.

16 I have to depend on you to come to -- you,
17 the professional involved in this, and I have to depend
18 on your mediation of this and for the next set of
19 documents that I receive. All right. Having said
20 that -- Mr. Harris.

21 MR. HARRIS: I request to respond on the G
22 Route issue.

23 COMMISSIONER MOORE: Yes.

24 MR. HARRIS: We wanted to make sure that we
25 looked after every possible route as the project came

1 into the hopper. We wanted to look at all of the
2 routes. When we started the process, it was only
3 La Paloma. We did look at the G Route as another
4 possible route.

5 It is becoming increasingly unlikely that
6 we would ever pursue that route. And I think that we're
7 pretty much prepared to very soon pull it off the table.
8 And if that helps Roger, I think that we can get you a
9 formal decision in short order.

10 COMMISSIONER MOORE: Explain the strategy
11 to me.

12 MR. HARRIS: Let me let Julie Way.

13 MS. WAY: Thanks, Jeff. As Jeff said, when
14 we became aware that staff was mitigating environmental
15 impact going across the street, we sent back and
16 reassessed our alternative and we identified the whole
17 array of alternatives which included the G Route, the
18 Oak Hills Project as one potential.

19 But as we have gone through the process and
20 examined the advantages and disadvantages of each route,
21 as Jeff said, it becomes increasingly clear that it
22 doesn't really appear to have an advantage for us.

23 There is a commercial standpoint, there is
24 an environmental stand point in the joining. Oak Hills
25 doesn't seem to have any impact so we in fact have been

1 focusing our efforts on the B Route.

2 And we, as Jeff said, are prepared to make
3 a full statement to staff, but we are not really
4 considering that a viable alternative at this time. We
5 are interested in at this time frame a number of
6 alternatives which may come to the B Route alternative.

7 As Jeff said, this has some obvious
8 advantages because they all go along the same corridor.
9 With this joint arrangement, we may be able to arrive at
10 another generator which should reduce the amount of work
11 required, not only on our part but on staff's as well.

12 So I hope that changes your concerns, and
13 we would be happy to talk with you more about all of the
14 issues.

15 COMMISSIONER MOORE: Well, Ms. Way, I
16 certainly appreciate your comment, and I think the
17 highlight is perhaps not that we need a more formal set
18 of contact with staff but perhaps a more ongoing and
19 dynamic discussion of where you are in the process.

20 I'm sure Mr. Johnson would prefer not to
21 have to devote staff resources to analyzing an
22 alternative which is no longer on the table. I think
23 that probably goes without saying.

24 So let's see if we can make sure that you
25 have a little more systematic and ongoing communication

1 with staff about what your intentions are, and perhaps
2 that will alleviate potential problems in the future.

3 Are there any members of public -- what I'm
4 doing is I'll republish the schedule when I can issue
5 the order.

6 MR. FAY: I'd like to ask the staff, while
7 we're here, if they are aware of any of the events
8 received on the public's published schedule that either
9 have not occurred as assumed on the schedule and may
10 cause delay or ones that are yet to come but you
11 anticipate problems.

12 MS. BERGQUIST: Well, we're going -- I
13 guess our next step will be as a result of supplement
14 material, we will be connected to a second or a third
15 data workshop and then of course allow the applicant
16 time to respond, and that's the next step in our
17 project, and then the PSA project are due to be finished
18 June 21st.

19 MR. FAY: So what is your estimated
20 publication date? The committee didn't put one in since
21 the PSA is not required by law.

22 MS. HOUGH: August the 2nd. The date that
23 is to be published.

24 MR. FAY: Okay. Thank you. I was
25 referring to specifically any of the detailed permits

1 and applicants that are listed in there, if you are
2 aware of any of them causing delay at this point.

3 MS. BERGQUIST: I would ask the applicant
4 to respond to that.

5 MR. HARRIS: Hopefully we covered each of
6 these in our status report. There are, as you know,
7 some issues, ongoing issues on transmission related to
8 ISO review and PG&E as the participating transmission
9 owner.

10 Those issues aren't unique to Sunrise
11 though. So with that, I thought that we have covered
12 these issues and hopefully we have addressed each of
13 them in the status report.

14 COMMISSIONER MOORE: Thank you. Let me ask
15 if there are members of public who wish to come to
16 address this, come on up one at a time and give us your
17 case. Maybe you could move that microphone up.

18 MR. BRAUN: Your Honorable Commissioner, I
19 am here on behalf of Texaco and Kern County business
20 community. I know first hand --

21 COMMISSIONER MOORE: Can I have your name
22 first.

23 MR. BRAUN: I am John Braun. PLAs will
24 and have caused companies, the state and owners more
25 money. PLAs will cost out of state travelers to take

1 away our local community's work. We are currently at a
2 12 to 13 percent unemployment rate.

3 I would like to repute CURE's analogies
4 about a shopping center is being built. The developer
5 is not given a sole right to build all the homes and
6 businesses in the surrounding community, in an area that
7 will use the benefits of the shopping center. Braun
8 Electric Company currently works for all the major oil
9 companies in Kern County including Texacos.

10 If a PLA goes in, we have approximately 140
11 people doing work out of the oil company which local
12 people there will lose their jobs.

13 COMMISSIONER MOORE: Thank you very much,
14 sir. I appreciate you coming.

15 MR. EDENS: Good Morning, my name is
16 Buddy Edens. I represent ABC, Associate Builders and
17 Contractors, which is a national organization. I am the
18 executive director for the Central California Chapter.
19 ABC is a service organization for Merit Shop Contractors
20 of which there are approximately 600 in Kern Valley
21 which would be affected that you make on this project
22 today.

23 I came here, and I am not a professional
24 speaker, I am not a lobbyist, I am not an attorney. I
25 am somewhat nervous, and I beg your indulgence in my

1 ability to try to present my position today.

2 I particularly would like to address the
3 intervention process in a position taken by CURE in this
4 process. And to do that, I would like to give you a
5 history so that you better understand my point of where
6 I'm coming from.

7 In 1973, 40 percent of the construction
8 labor force were members of the AFL-CIO building and
9 construction unions. By 1994, only 18.8 percent were
10 members. Meanwhile, the construction labor force had
11 increased by almost one million members.

12 In the first nationwide study of the market
13 penetration of open shop or merit shop construction, the
14 authors estimated that in 1975, "It appeared likely that
15 the open shop builders were in the majority, and
16 probably controlled 50 to 60 percent of the total
17 construction work.

18 A second nationwide study made nine years
19 later concluded, "That the dollar volume of construction
20 produced by union craftsmen is not likely to exceed 30
21 percent of the total. During the years, since 1970,
22 open shop construction has increased in sectors and
23 regions in which unions historically dominated. At the
24 same time sectors and regions, which traditionally have
25 been union strongholds, have been significantly

1 penetrated by the open shop."

2 No study of this nature has been published
3 since 1984. But based on regular monitoring of the
4 field, the open shop share of the construction dollar
5 has stabilized at about 75 to 80 percent and that is
6 nationally.

7 In response to this decline, construction
8 unions and union contractors have developed a host of
9 economic and political initiatives to bolster or protect
10 their memberships and their businesses. Many
11 contractors have either broken with unions and now
12 operate open shop or have developed and purchased an
13 open shop company and now operate doublebreasted, that
14 is, they have two separate firms, one union and one open
15 shop. This permits them to bid on jobs regardless of
16 the union orientation in a given sector or area.

17 Unions and union contractors also have
18 negotiated agreements removing or modifying numerous
19 restraints on productivity and flexibility of
20 operations, although many sectors still remain in
21 agreements in some localities.

22 Union wage and benefit increases have
23 slowed dramatically since 1980. In 1984, such increases
24 averaged 2.7 percent for the first year and 3.0 percent
25 for the second year of multiyear agreements. In

1 contrast, these increases often exceeded 10 percent
2 annually between the years 1965 and 1980.

3 The construction unions, however, have
4 determined that economic actions alone are insufficient
5 to regain their market share. They have begun,
6 therefore, to take both political and direct actions.

7 On the political front, construction unions
8 are pushing several laws that would enhance their power
9 and are pressuring local governments to require
10 all-union agreements or PLAs, which are Project Labor
11 Agreements for those of who don't know what that stands
12 for, which would preclude the use of open shop
13 contractors.

14 By direct action, the construction unions
15 are engaged in a number of innovative programs. The
16 first and most important is probably "salting," or
17 having union members or organizers take jobs with open
18 shop contractors to organize the employees and to
19 disrupt open shop contractor operations, job targeting,
20 subsidizing union contractors to win bids and jobs by
21 directly or indirectly paying part of wages and benefits
22 from various pooled funds and regulatory action. The
23 subject of this discussion.

24 By the early 1980s, California,
25 historically a strong union construction state, was

1 trending to the open shop. Particularly in its southern
2 and eastern portions, and in areas north of the
3 San Francisco Bay. San Francisco remained heavily
4 unionized except for home building and general
5 remodeling. By the mid 1980s, the local unions in the
6 counties around San Francisco Bay had determined to take
7 action to strengthen their position.

8 The first step was the creation of a
9 computer database. The purpose was twofold: To track
10 all general contractors and subcontractors, and to track
11 all permits issued. Dubbed "the pipeline," the database
12 included information about contractors and about buyers
13 of construction services, such as, owners which is
14 Texaco. It reflected their current past projects and
15 financing, any political involvement. It also specifies
16 whether the contractors are union, open shop or
17 doublebreasted.

18 Additional information included whether
19 contractors previously have given unions difficulties at
20 any locations, whether the contractors have a sound
21 safety record and Occupational Safety and Health
22 Administration, OSHA, charges exist against them, and
23 whether the contractors' workmanship had been in line
24 with local ordinances pertaining to construction. All
25 such information can be used as ammunition by unions at

1 permit hearings or at publicity programs.

2 Simultaneously, the unions feed into the
3 database all permit applications and permits granted,
4 except minor ones granted to homeowners doing their own
5 work. Unions considered it important to learn about
6 permits as soon as applications are filed, so that
7 action can be taken before the permit is issued.

8 Information is updated regularly and often
9 weekly, through a program called BIDS, Bidder
10 Information and Directory Service. Thus, each week the
11 unions can decide which permit applications need their
12 attention. Such information also is sent to union
13 subcontractors and to local unions.

14 With this knowledge, the construction
15 unions can take various actions. When union contractors
16 are involved in identified projects, they may encourage
17 members and union officials to support the permit
18 applications as environmentally sound and a boon to
19 employment at good wages. They also may pressure
20 environmental organizations that generally cooperate
21 either to support the project or at least to refrain
22 from opposing it.

23 When open shop contractors are involved in
24 these same projects, construction unions take the
25 opposite stance, but usually first attempt to persuade

1 the user to give the job to a union firm by pointing out
2 the advantage of having union support in the permitting
3 process.

4 Unions also may attempt to plant salters
5 and to organize the open shop contractor's workforce if
6 the job is started. If they fail to secure the jobs for
7 union members, however, the construction unions will use
8 legal maneuvers to delay or stop the project or to add
9 to its costs.

10 For example, unions intervening in the
11 permitting process often begin by claiming that the
12 user's application does not protect sufficiently the air
13 or water quality, that drainage or waste disposal plans
14 are insufficient, or that the construction plan violates
15 other environmental regulations.

16 The union posture may be supported by
17 environmental groups and by consumer groups that spring
18 up and likely are controlled or funded by unions, CURE,
19 and sometimes there are environmental deficiencies in
20 the applications that should be corrected. Often,
21 however, the union action is more designed to inflict
22 costs on the owners than to protect the environment.

23 Permitting delays can be extremely costly
24 as a result of the time and effort expended in
25 disproving or satisfying those environmental concerns

1 stressed by the intervenors. And when a project is
2 delayed, more taxes, interest, general overhead, and
3 payroll mount with no attendant return on investment.

4 Years ago when construction unions were
5 more powerful, one author explained that strikers could
6 just, "watch the clock tick into terms." Their
7 permitting process allows union intervention to recreate
8 this past union power by using delays to gain project
9 labor agreements which restrict all project work to
10 union only contractors and workers.

11 In their application to intervene in the
12 process to permit the Sunrise Cogeneration and Power
13 Project, which they say stands for California Unions for
14 Reliable Energy, but which really stands for, I believe,
15 California Unions for Restricted Energy, which actively
16 refers to the restriction or infringement on the ideals
17 and process of free enterprise.

18 Anyhow, CURE states that this project
19 affects the union members long term economic and
20 environmental interests. Environmental degradation
21 jeopardizes future jobs by causing construction
22 moratoriums, depleting limited air pollutant emissions
23 offsets, using limited fresh water and putting other
24 stresses on the environmental carrying capacity of the
25 state. This reduces future employment opportunities.

1 Additionally, union members live in the
2 communities that suffer the impacts of environmentally
3 detrimental projects. Unions have an interest in
4 helping to minimize the impacts of projects that would
5 degrade the environment, and is enforcing environmental
6 laws to protect their members.

7 Finally, union members are concerned about
8 projects that cause serious environmental harm without
9 providing countervailing economic benefits. The
10 commission's application process provides for a
11 balancing of the project's socioeconomic and
12 environmental impacts. CURE's ultimate position in this
13 proceeding will be determined based on all of the
14 factors that will be considered by the commission.

15 It is our opinion that none of this
16 represents the pure intent of this petition. If the
17 truth be known, this petition is really a method to
18 intimidate and badger the owner by delaying the
19 permitting process until the owner agrees to a project
20 labor agreement which would restrict any work on this
21 project to union only contractors and members.

22 It is interesting to note that CURE also
23 states that it has been granted intervention in four
24 other projects before the commission, the High Desert
25 Power Project, the Sutter Power Project, the Pittsburgh

1 District Energy Facility and the La Paloma Generating
2 Project. And it is even more interesting to note that
3 each of these are targeted for union only project labor
4 agreements. And at least one or two of these have
5 succumbed to union demands and a PLA is in place.

6 How is this accomplished? Easy, once the
7 owner agrees to a PLA, CURE withdraws any objection they
8 may have had and will now support the permitting process
9 rather than continue to intervene.

10 Unions will argue that PLAs assure quality
11 workmanship, increase safety and reduce costs. However,
12 there are numerous published and validated studies such
13 as those by Professor Herbert Northrup of the Wharton
14 School of Business at the University of Pennsylvania,
15 and labor attorney, Linda Alario. Each of these
16 demolish these myths.

17 The country's largest construction
18 companies are Merit Shop and they have documented
19 history that demonstrates their quality and performance
20 on projects of all sizes. Osha's latest statistical
21 study on construction fatalities found that fatalities
22 rates for non-union contractors were significantly lower
23 than those of union contractors for the years studied.

24 In addition, when considering construction
25 costs, non-union contractors are comparably more

1 efficient because they can maintain flexibility in
2 deploying workers, train workers more rationally and
3 construct market-determined wage and benefit packages.

4 Unions also claim that PLAs reduce costs by
5 eliminating strikes and limiting overtime. I call to
6 your attention the recent work stoppage at the San
7 Francisco Airport --

8 COMMISSIONER MOORE: You know, I'm going to
9 ask you to stop. I realize I should have stopped you a
10 little earlier. There's no reason for a diatribe
11 against CURE. You haven't introduced any evidence to
12 suggest CURE or their representatives have acted
13 inappropriately or anything else. And I'm going to ask
14 you to sit down.

15 I won't allow any more testimony in any
16 hearing that I conduct that is a diatribe against any
17 individual. If you got comments like that, you file
18 them in the docket and you send them to us by mail.

19 I think that there is no need for Ms. Poole
20 or anyone else to respond. The CURE intervention that I
21 have been involved in have been responsible and
22 thoughtful. I have entertained some of them and frankly
23 I have entertained your comments but now I'm not going
24 to anymore. Thank you.

25 Is there anyone else that would like to

1 discuss this case with us?

2 MR. BATEMAN: Yes, sir. My name is
3 Kevin Bateman. I'm representing ARB incorporated. We
4 are a longstanding local contractor in the Kern County
5 area.

6 COMMISSIONER MOORE: Good morning.

7 MR. BATEMAN: And a good partner and friend
8 to the Texaco folks that you see here. My comment today
9 is strictly related to the relationship that we share
10 with them. The project we have both been involved in
11 has been a good one and environmentally sound.

12 They have come to us for help at many times
13 in the past in constructing their facilities, and we
14 have been involved both in the oil patch and in several
15 of the cogeneration-type projects that occurred in that
16 area and support their effort in this project now again.

17 We have known them to be upstanding people
18 who have done what they said they do. And we, as a
19 longstanding Bakersfield part of the economic community,
20 look forward to being a conduit for some of the benefits
21 that they may bring to the community, as well as being a
22 part of the community to help put the project through.

23 Thank you.

24 COMMISSIONER MOORE: Are you on that team
25 right now?

1 MR. BATEMAN: No, I am -- again, we have an
2 ancillary relationship through contracting. We happen
3 to be a building trades contractor but have had a long
4 relationship with Texaco in this project and are here
5 simply to support them at this time today.

6 COMMISSIONER MOORE: Good, I appreciate
7 that. Anyone else that may wish to address that. All
8 right. With that, I am going to close. There will be
9 an order issue in a few days and -- I'm sorry,
10 Ms. Hough.

11 MS. HOUGH: Thank you, Commissioner. I was
12 going to suggest the staff and applicant and anybody
13 else that is interested might stay at least until noon
14 and discuss some of the scheduling issues resulting from
15 the transmission files.

16 COMMISSIONER MOORE: Mr. Harris will
17 probably be appreciative of that. All right. With
18 that, this hearing is adjourned.

19 (Thereupon the conference concluded at 1:30 p.m.)

20 --o0o--

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2

3 I, Nicole Johnson, a Certified Shorthand Reporter,
4 hereby certify that the attached proceedings before
5 California Energy Commission,

6

7 In the Matter of)
8 Application for Certification) Docket No. 98-AFC-4
9 for the Sunrise Cogeneration)
10 and Power Project)

11

12 were held as herein appears and that this is the
13 original transcript thereof and that the statements that
14 appear in this transcript were taken down in
15 stenographic shorthand by me, a Certified Shorthand
16 Reporter, at the time and place therein stated, and was
17 thereafter reduced to typewritten form using
18 computer-aided transcription.

19 I further certify that this transcript is a
20 true, complete, and accurate record of the proceeding.

21 Signed and dated this 7th day of June, 1999.

22

23

24 _____
25 NICOLE M. JOHNSON, CSR No. 11891

26

27

